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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 KLAUBER BROTHERS, INC., a New
14 York corporation,

15 Plaintiff,

16 v.
17

18 H&M HENNES & MAURITZ LP, a New
19 York limited partnership, individually,
20 and d/b/a "HM.COM"; and DOES 1
through 10,

21 Defendants.
22

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT

Jury Trial Demanded

23
24 Plaintiff KLAUBER BROTHERS, INC., by and through its undersigned
25 attorneys, hereby prays to this honorable Court for relief based on the following:
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1 and will seek leave to amend this complaint to show their true names and capacities
2 when same have been ascertained.

3 7. Defendants Does 4 through 10, inclusive, are other parties not yet identified
4 who have infringed Plaintiff's copyrights, have contributed to the infringement of
5 Plaintiff's copyrights, or have engaged in one or more of the wrongful practices
6 alleged herein. The true names, whether corporate, individual or otherwise, of
7 Defendants 4 through 10, inclusive, are presently unknown to Plaintiff, which
8 therefore sues said Defendants by such fictitious names, and will seek leave to
9 amend this Complaint to show their true names and capacities when same have been
10 ascertained.

11 8. Plaintiff is informed and believes and thereon alleges that at all times
12 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
13 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
14 at all times acting within the scope of such agency, affiliation, alter-ego relationship
15 and/or employment; and actively participated in or subsequently ratified and
16 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of
17 all the facts and circumstances, including, but not limited to, full knowledge of each
18 and every violation of Plaintiff's rights and the damages to Plaintiff proximately
19 caused thereby.

20 **CLAIMS RELATED TO DESIGN 3924**

21 9. Prior to the conduct complained of herein, Plaintiff composed an original
22 two-dimensional artwork for purposes of textile printing. It allocated this design
23 Plaintiff's Internal Design Number 3924 (the "Subject Design"). This artwork was a
24 creation of Plaintiff and/or Plaintiff's design team, and is, and at all relevant times
25 was, owned in exclusively by Plaintiff.

26 10. Plaintiff applied for and received a United States Copyright Registration
27 covering the Subject Design.

1 11. Prior to the acts complained of herein, Plaintiff sampled and sold fabric
2 bearing the Subject Design to numerous parties in the fashion and apparel industries.

3 12. Following this distribution of product bearing the Subject Design,
4 Plaintiff's investigation revealed that certain entities within the fashion and apparel
5 industries had misappropriated the Subject Design, and were selling fabric and
6 garments bearing illegal reproductions and/or derivations of the Subject Design.

7 13. Plaintiff is informed and believes and thereon alleges that, without
8 Plaintiff's authorization, H&M, and certain Doe defendants created, sold,
9 manufactured, caused to be manufactured, imported and/or distributed fabric and/or
10 garments comprised of fabric featuring designs which are identical to or substantially
11 similar to the Subject Design ("Infringing Garment"). Such garments include, but are
12 not limited to

- 13 a. Garments sold by H&M under Style No. 0355327-001 with the RN
14 No. 101255 on the affixed label, indicating said garments were
15 manufactured and/or supplied by or at the direction of H&M. Below
16 is a comparison of the Subject Design and an exemplar of the
17 Infringing Garment (detail and garment):

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Subject Design	Infringing Garment Exemplar
	<p data-bbox="1149 275 1255 310">Detail:</p> 
	<p data-bbox="1138 957 1266 993">Garment</p> 

b. Garments sold by H&M under Style No. 0328011-001 with the RN No. 101255 on the affixed label, indicating said garments were manufactured and/or supplied by or at the direction of H&M. Below is a comparison of the Subject Design and an exemplar of the Infringing Garment (detail and garment)

Subject Design	Infringing Garment Exemplar
	<p data-bbox="1159 596 1256 638">Detail</p> 
	<p data-bbox="1143 1163 1273 1205">Garment</p> 

- c. Garments sold by H&M under Style No. 0362253-001 with the RN No. 101255 on the affixed label, indicating said garments were manufactured and/or supplied by or at the direction of H&M. Below is a comparison of the Subject Design and an exemplar of the Infringing Garment (detail and garment)

Subject Design	Infringing Garment Exemplar
	<p data-bbox="1159 596 1256 638">Detail</p>  <p data-bbox="1127 1205 1273 1247">Garment:</p> 

1 producing, distributing and/or selling garments which infringe the Subject Design
2 through a nationwide network of retail stores, catalogues, and through on-line
3 websites.

4 19. Due to Defendants' acts of infringement, Plaintiff has suffered substantial
5 damages to its business in an amount to be established at trial.

6 20. Due to Defendants' acts of infringement, Plaintiff has suffered general and
7 special damages in an amount to be established at trial.

8 21. Due to Defendants' acts of copyright infringement as alleged herein,
9 Defendants, and each of them, have obtained direct and indirect profits they would
10 not otherwise have realized but for their infringement of the Subject Design. As
11 such, Plaintiff is entitled to disgorgement of Defendant's profits directly and
12 indirectly attributable to Defendant's infringement of the Subject Design in an
13 amount to be established at trial.

14 22. Plaintiff is informed and believes and thereon alleges that Defendants, and
15 each of them, have committed acts of copyright infringement, as alleged above,
16 which were willful, intentional and malicious, which further subjects Defendants,
17 and each of them, to liability for statutory damages under Section 504(c)(2) of the
18 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00)
19 per infringement. Within the time permitted by law, Plaintiff will make its election
20 between actual damages and statutory damages.

21 **SECOND CLAIM FOR RELIEF**

22 (For Vicarious and/or Contributory Copyright Infringement - Against All
23 Defendants)

24 23. Plaintiff repeats, realleges, and incorporates herein by reference as though
25 fully set forth, the allegations contained in the preceding paragraphs of this
26 Complaint.
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1 24. Plaintiff is informed and believes and thereon alleges that Defendants
2 knowingly induced, participated in, aided and abetted in and profited from the illegal
3 reproduction and/or subsequent sales of garments featuring the Subject Design as
4 alleged herein.

5 25. Plaintiff is informed and believes and thereon alleges that Defendants, and
6 each of them, are vicariously liable for the infringement alleged herein because they
7 had the right and ability to supervise the infringing conduct and because they had a
8 direct financial interest in the infringing conduct.

9 26. By reason of the Defendants', and each of their, acts of contributory and
10 vicarious infringement as alleged above, Plaintiff has suffered and will continue to
11 suffer substantial damages to its business in an amount to be established at trial, as
12 well as additional general and special damages in an amount to be established at
13 trial.

14 27. Due to Defendants', and each of their acts of copyright infringement as
15 alleged herein, Defendants, and each of them, have obtained direct and indirect
16 profits they would not otherwise have realized but for their infringement of the
17 Subject Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits
18 directly and indirectly attributable to Defendants' infringement of the Subject
19 Design, in an amount to be established at trial.

20 28. Plaintiff is informed and believes and thereon alleges that Defendants, and
21 each of them, have committed acts of copyright infringement, as alleged above,
22 which were willful, intentional and malicious, which further subjects Defendants,
23 and each of them, to liability for statutory damages under Section 504(c)(2) of the
24 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00)
25 per infringement. Within the time permitted by law, Plaintiff will make its election
26 between actual damages and statutory damages.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment as follows:

Against All Defendants

29. With Respect to Each Claim for Relief

- a. That Defendants, their agents and employees be enjoined from infringing Plaintiff's copyrights in any manner, specifically those for the Subject Design;
- b. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants through their infringement, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*;
- c. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act U.S.C. §§ 101, *et seq.*;
- d. That Defendants, and each of them, account to Plaintiff for their profits and any damages sustained by Plaintiff arising from the foregoing acts of infringement;
- e. That Plaintiff be awarded pre-judgment interest as allowed by law;
- f. That Plaintiff be awarded the costs of this action; and
- g. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

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